

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A  
SHORELINE VARIANCE PERMIT  
ISSUED BY KING COUNTY TO  
JANIE P. CARR, AND APPROVED  
BY THE STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

JANIE P. CARR,

Appellant,

v.

KING COUNTY and  
STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 82-11

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of a shoreline variance permit issued by King County and approved by the Washington State Department of Ecology, came on for hearing before the Shorelines Hearings Board, Gayle Rothrock, Acting Chairman, David Akana, Robert Coon and A. M. O'Meara, Members, convened at Lacey, Washington, on June 30, 1982. William A. Harrison, Administrative Law Judge, presided.

1 Appellant appeared and represented herself. Respondent King  
2 County appeared by James L. Brewer, Deputy Prosecuting Attorney.  
3 Respondent Department of Ecology appeared by Patricia A. Hickey,  
4 Assistant Attorney General. The proceedings were electronically  
5 recorded.

6 Witnesses were sworn and testified. Exhibits were examined. From  
7 testimony heard and exhibits examined, the Shorelines Hearings Board  
8 makes these

9 FINDINGS OF FACT

10 I

11 This matter arises on the shoreline of Quartermaster Harbor on  
12 Vashon Island.

13 II

14 The shoreline in this area has three tiers. The first is the  
15 tideland which extends to a wooden bulkhead. (This bulkhead is  
16 continuous across several adjacent lots, though each owner maintains  
17 his or her portion.) The second tier is a narrow shelf extending back  
18 to a steep clay bank 30 to 40 feet in height. The third tier, on top  
19 of the bank, contains the roadway serving the beach.

20 III

21 Appellant purchased a summer cottage which was built on the shelf  
22 portion of the shoreline in 1898. The cottage was skewed at an angle  
23 to the bulkhead and one corner of it was next to the bulkhead.

IV

Some three years ago, appellant began to remodel or reconstruct the one-story cottage into a two-story home. This venture included the placement of first- and second-story decks along the front of the home which protruded over the bulkhead and were supported on narrow posts standing on the tidelands. Both decks also wrapped around one end of the home. This work was planned and completed without application to King County for a shoreline permit.

V

Upon discovering the shoreline construction, King County correctly determined that the site is within a conservancy designation. This designation, in turn, requires structures to be set back 50 feet from the ordinary high water mark<sup>1</sup> (the bulkhead in this case). Consequently, King County advised appellant to seek an after-the-fact shoreline variance. Appellant did so, requesting permission to retain what was built. King County approved the shoreline variance request so far as the home itself but required removal of the portion of the lower deck overhanging the bulkhead and all of the upper deck excepting only a short portion on the end of the house to allow access to a door located there. Department of Ecology approved the variance permit as granted by King County. From this appellant appeals.

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1. King County Shoreline Master Program Sec. 609(2), p. 39.

1 VI

2 Appellant intends to seek a shoreline permit and, if granted, to  
3 reinforce the existing bulkhead by the vertical placement of logs  
4 along its face. This would widen appellant's bulkhead to the same  
5 width as her neighbors who have employed the same technique.  
6 Appellant's neighbors have not built waterward of their portions of  
7 the bulkhead.

8 VII

9 Any Conclusion of Law which should be deemed a Finding of Fact is  
10 hereby adopted as such.

11 From these Findings the Board comes to these

12 CONCLUSIONS OF LAW

13 I

14 The setback requirement applicable to appellant's lot (a  
15 conservancy environment) forbids all of appellant's reconstruction. A  
16 shoreline variance must be obtained for any of the reconstruction to  
17 be lawful.

18 II

19 The criteria for approval of a shoreline variance is stated at  
20 WAC 173-14-150 of the Department of Ecology. King County Shoreline  
21 Master Program Sec. 804(1), p. 47 and RCW 90.58.100(5). The criteria  
22 is:

23 WAC 173-14-150 REVIEW CRITERIA FOR VARIANCE PERMITS.

24 The purpose of a variance permit is strictly  
25 limited to granting relief to specific bulk,  
26

1 dimensional or performance standards set forth in the  
2 applicable master program where there are  
3 extraordinary or unique circumstances relating to the  
4 property such that the strict implementation of the  
5 master program would impose unnecessary hardships on  
6 the applicant or thwart the policies set forth in  
7 RCW 90.58.020.

8 (1) Variance permits should be granted in a  
9 circumstance where denial of the permit would result  
10 in a thwarting of the policy enumerated in  
11 RCW 90.58.020. In all instances extraordinary  
12 circumstances should be shown and the public interest  
13 shall suffer no substantial detrimental effect.

14 (2) ...

15 (3) Variance permits for development that will  
16 be located either waterward of the ordinary high  
17 water mark (OHWM), as defined in RCW 90.58.030(2)(b),  
18 or within marshes, bogs, or swamps as designated by  
19 the department pursuant to chapter 173-22 WAC, may be  
20 authorized provided the applicant can demonstrate all  
21 of the following:

22 (a) That the strict application of the bulk,  
23 dimensional or performance standards set forth in the  
24 applicable master program precludes a reasonable use  
25 of the property not otherwise prohibited by the  
26 master program.

27 (b) That the hardship described in WAC  
173-14-150(3)(a) above is specifically related to the  
property, and is the result of unique conditions such  
as irregular lot shape, size, or natural features and  
the application of the master program, and not, for  
example, from deed restrictions or the applicant's  
own actions.

(c) That the design of the project will be  
compatible with other permitted activities in the  
area and will not cause adverse effects to adjacent  
properties or the shoreline environment designation.

(d) That the requested variance will not  
constitute a grant of special privilege not enjoyed  
by the other properties in the area, and will be the  
minimum necessary to afford relief.

(e) That the public rights of navigation and  
use of the shorelines will not be adversely affected  
by the granting of the variance.

(f) That the public interest will suffer no  
substantial detrimental effect.

1 (4) In the granting of all variance permits,  
2 consideration shall be given to the cumulative impact  
3 of additional requests for like actions in the area.  
4 For example, if variances were granted to other  
5 developments in the area where similar circumstances  
6 exist the total of the variances should also remain  
7 consistent with the policies of RCW 90.58.020 and  
8 should not produce substantial adverse effects to the  
9 shoreline environment.

6 III

7 King County was correct in recognizing that extraordinary  
8 circumstances exist because of the topography of appellant's lot. The  
9 50-foot setback of the King County Shoreline Master Program (KSCMP)  
10 would impose unnecessary hardship if strictly implemented. King  
11 County therefore granted a shoreline variance for the reconstruction  
12 of the house which removed that hardship. In refusing to further  
13 grant authority for protrusion beyond the bulkhead, King County  
14 adhered to the requirement that only the minimum necessary to afford  
15 relief shall be authorized WAC 173-14-150(3)(c), above. Allowing  
16 appellant to build waterward of the bulkhead would also constitute a  
17 special privilege not enjoyed by other properties in the area, also in  
18 violation of WAC 173-14-150(3)(c).

19 IV

20 Likewise, the construction of any second story deck along the  
21 front of the home is both more than the minimum necessary to afford  
22 relief and a grant of special privilege in violation of  
23 WAC 173-14-150(3)(c). King County was correct in not authorizing a  
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1 second story deck except as was allowed for access to the second story  
2 door on the end of the home.

3 V

4 The action of King County in granting the shoreline variance as it  
5 did should be affirmed. In reaching this conclusion, however, we  
6 interpret the requirement that the lower deck be made flush with the  
7 face of the "bulkhead" to mean "the bulkhead as it now stands or as  
8 legally reinforced." This interpretation is necessary to grant the  
9 "minimum necessary" to relieve unnecessary hardship.  
10 WAC 197-14-150(3)(c). It has the effect of allowing a slightly wider  
11 first story deck, limited by the bulkhead line which appellant shares  
12 with her neighbors.

13 VI

14 Any Finding of Fact which should be deemed a Conclusion of Law is  
15 hereby adopted as such.

16 From these Conclusions the Board enters this  
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ORDER

The shoreline variance permit granted to Janie P. Carr by King County and approved by the Department of Ecology is affirmed.

DATED this 30<sup>th</sup> day of September, 1982.

SHORELINES HEARINGS BOARD

Gayle Rothrock  
GAYLE ROTHROCK, Chairman

David Akana  
DAVID AKANA, Lawyer Member

Robert Coon  
ROBERT COON, Member

See Opinion Concurring & Dissenting  
A. M. O'MEARA, Member

William A. Harrison  
WILLIAM A. HARRISON  
Administrative Law Judge



1  
2 CONCURRING & DISSENTING OPINION - A. M. O'MEARA  
3

4 I concur with limiting the first story deck to the present or  
5 reinforced bulkhead line. I dissent from the portion of this Order  
6 which disallows any second story deck on the front of the house. I  
7 would allow it out to the bulkhead line.  
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11 A. M. O'MEARA, Member  
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